

1 JANET L. CHUBB, ESQ.
 2 Nevada State Bar No. 176
 3 LOUIS M. BUBALA III, ESQ.
 4 Nevada State Bar No. 8974
 5 JONES VARGAS
 6 100 W. Liberty St, 12th Floor
 7 P.O. Box 281
 8 Reno, NV 89504-0281
 9 Telephone: 775-786-5000
 10 Fax: 775-786-1177
 11 Email: jlc@jonesvargas.com
 12 and tbw@jonesvargas.com
 13 and lbubala@jonesvargas.com

*Electronically Filed on:
March 12, 2007*

7 Attorneys for Fertitta Enterprises, Inc.

8 **UNITED STATES BANKRUPTCY COURT**

9 **DISTRICT OF NEVADA**

10 In re:

11 USA COMMERCIAL MORTGAGE COMPANY,
12 Debtor.

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR
Case No. BK-S-06-10729-LBR

13 USA CAPITAL REALTY ADVISORS, LLC,
14 Debtor.

Chapter 11

15 USA CAPITAL DIVERSIFIED TRUST DEED FUND,
16 LLC,
17 Debtor.

**DECLARATION OF WILLIAM J.
BULLARD IN SUPPORT OF
FERTITTA ENTERPRISES,
INC.'S OPPOSITION TO
DEBTORS' MOTION TO
AUTHORIZE DEBTOR USA
COMMERCIAL MORTGAGE
COMPANY AS LOAN SERVICER
TO ACCEPT PAYMENTS AND
PROVIDE RECONVEYANCES
FOR TWO COLT GATEWAY
LOANS, WITH CERTIFICATE OF
SERVICE**

18 USA CAPITAL FIRST TRUST DEED FUND, LLC,
19 Debtor.

Hearing Date: March 15, 2007
Hearing Time: 9:30 am

20 USA SECURITIES, LLC,
21 Debtor.

22 Affects:
 All Debtors
 USA Commercial Mortgage Company
 USA Capital Realty Advisors, LLC
 USA Capital Diversified Trust Deed Fund, LLC
 USA Capital First Trust Deed Fund, LLC
 USA Securities, LLC

23
24 I, William J. Bullard, declare under penalty of perjury and state as follows:

25 1. I am the Chief Financial Officer at Fertitta Enterprises, Inc. ("Fertitta"), a co-lender
 26 to the Colt Gateway LLC loan being administered by USA Commercial Mortgage Company
 27 ("Debtor"). I have personal knowledge of the facts recited herein, and I am competent to testify

JONES VARGAS
 100 W. Liberty Street, 12th Floor
 P.O. Box 281
 Reno, Nevada 89504-0281
 Tel: (775) 786-5000 Fax: (775) 786-1177

1 regarding them, except with respect to those facts that are on information and belief, and as to
 2 those facts, I believe them to be true.

3 2. I make this Declaration in support of Fertitta's Opposition to Debtors' Motion to
 4 Authorize Debtor USA Commercial Mortgage Company as Loan Servicer to Accept Payments
 5 and Provide Reconveyances for Two Colt Gateway Loans.

6 **Colt Gateway's Ability to Pay Off the Loans**

7 3. On March 12, 2007, I spoke via telephone with Robert MacFarlane, president of
 8 Colt Gateway.

9 4. I asked Mr. MacFarlane to provide me with any written commitment that Colt
 10 Gateway has for financing to pay off the loans.

11 5. I later received a fax from Mr. MacFarlane consisting of an nonbinding and expired
 12 letter offer from PRIF II Acquisition, LLC, a true and accurate copy which is attached at Exhibit
 13 1.

14 6. The letter, dated January 22, 2007, states that it "constitutes neither an offer nor a
 15 commitment by PRIF in any form, but rather summarizes the terms of the proposed transaction."

16 7. The letter is not executed and states that the terms expired on January 29, 2007.

17 **Fertitta's Rights as a Lender**

18 8. Fertitta never waived its right to collect interest at the default rate on the Colt
 19 Gateway #1 Loan.

20 9. Colt Gateway has been in default on the Colt Gateway #1 loan since December 23,
 21 2003, because it did not pay off the loan by its maturity date of December 22, 2003.

22 10. I have not authorized, seen, or executed an extension of the promissory note.

23 11. Since the default, interest has accrued at the default rate of 20 percent, or 5 percent
 24 greater than the standard 15 percent interest rate.

25 12. Colt Gateway owes \$310,688.57 in default interest from January 1, 2004, through
 26 February 28, 2007, based on the figures in the investor history report provided to me by USA
 27 Commercial (a true and accurate copy attached hereto as Exhibit 2) and the 5 percent increase in

JONES VARGAS
 100 W. Liberty Street, 12th Floor
 P.O. Box 281
 Reno, Nevada 89504-0281
 Tel: (775) 786-5000 Fax: (775) 786-1177

1 the interest rate after Colt Gateway's default, as evidenced by the spreadsheet attached as Exhibit
2 2. This figure is the amount accrued for all lenders on the Colt Gateway #1 Loan.

3 13. Fertitta never waived its right to collect late fees owed by the borrower on the Colt
4 Gateway #1 Loan.

5 14. Colt Gateway also owes \$163,069.69 as the 5 percent late charge pursuant to the
6 terms of the loan documents and the outstanding balance of \$3,261,393.94 as of December 31,
7 2003, eight days after the loan matured and Colt Gateway defaulted, as evidenced by the true and
8 accurate copy of the investor history report attached as exhibit 2. This figure is the late charge for
9 all lenders on the Colt Gateway #1 Loan.

10 DATED this 12th day of March, 2007.

11 //s//William J. Bullard
12 WILLIAM J. BULLARD

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
JONES VARGAS
100 W. Liberty Street, 12th Floor
P.O. Box 281
Reno, Nevada 89504-0281
Tel: (775) 786-5000 Fax: (775) 786-1177

CERTIFICATE OF SERVICE

1. On March 12, 2007, I served the following document(s):

DECLARATION OF WILLIAM J. BULLARD IN SUPPORT OF FERTITTA ENTERPRISES, INC.'S OPPOSITION TO DEBTORS' MOTION TO AUTHORIZE DEBTOR USA COMMERCIAL MORTGAGE COMPANY AS LOAN SERVICER TO ACCEPT PAYMENTS AND PROVIDE RECONVEYANCES FOR TWO COLT GATEWAY LOANS, WITH CERTIFICATE OF SERVICE

2. I served the above-named document(s) by the following means to the persons as listed below:

- a. **ECF System** (attach the "Notice of Electronic Filing" or list all persons and addresses):

- MICHELLE L. ABRAMS mabrams@mabramslaw.com
- FRANKLIN C. ADAMS franklin.adams@bbklaw.com, arthur.johnston@bbklaw.com
- NANCY L ALLF nallf@parsonsbehle.com, klawrence@parsonsbehle.com;tthomas@parsonsbehle.com;ecf@parsonsbehle.com
- FRANK A. ANDERSON anderson.frank@pbgc.gov, efile@pbgc.gov
- OGONNA M. ATAMOH oatamoh@nevadafirm.com, bkecf@nevadafirm.com;paltstatt@nevadafirm.com;sliberio@nevadafirm.com
- KERIANN M ATENCIO ATENCIOK@GTLAW.COM
- BMC GROUP, INC. evrato@bmcgroup.com, ecf@bmcgroup.com;jmiller@bmcgroup.com;jbartlett@bmcgroup.com
- GEORGANNE W. BRADLEY georganne.bradley@bullivant.com, mary.opatry@bullivant.com
- KELLY J. BRINKMAN kbrinkman@gooldpatterson.com
- THOMAS R BROOKSBANK tom@tombrooksbank.com, renee@tombrooksbank.com
- ANDREW M. BRUMBY abrummy@shutts-law.com, rhicks@shutts-law.com;lmackson@shutts-law.com
- LOUIS M. BUBALA lbubala@jonesvargas.com, tbw@jonesvargas.com;bjlingenfelter@jonesvargas.com
- MATTHEW Q. CALLISTER mqc@callister-reynolds.com, maggie@callister-reynolds.com
- CANDACE C CARLYON ltreadway@sheacarlyon.com, ccarlyon@sheacarlyon.com; bankruptcyfilings@sheacarlyon.com; rmsmith@sheacarlyon.com
- ROB CHARLES rcharles@lrlaw.com, cjordan@lrlaw.com
- MICHAEL W. CHEN yvette@ccfirm.com
- KEVIN B. CHRISTENSEN kbchrislaw@aol.com
- JANET L. CHUBB tbw@jonesvargas.com
- JEFFREY A. COGAN jeffrey@jeffreycogan.com, sarah@jeffreycogan.com
- WILLIAM D COPE cope_guerra@yahoo.com
- CICI CUNNINGHAM bankruptcy@rocgd.com
- LAUREL E. DAVIS bklsc1v@lionelsawyer.com, ldavis@lionelsawyer.com;gbagley@lionelsawyer.com;ldavisesq@aol.com
- DEBT ACQUISITION COMPANY OF AMERICA V, LLC (tf) tfette@daca4.com
- THOMAS H. FELL BANKRUPTCYNOTICES@GORDONSILVER.COM

- 1 • SCOTT D. FLEMING sfleming@halelane.com,
dbergsing@halelane.com,ecfvegas@halelane.com
- 2 • GREGORY E GARMAN bankruptcynotices@gordonsilver.com
- 3 • WADE B. GOCHNOUR wgochnour@hwmlvlaw.com, donnat@hwmlvlaw.com
- 4 • CARLOS A. GONZALEZ carlos.gonzalez2@usdoj.gov,
Darlene.Ruckard@usdoj.gov;Eunice.Jones@usdoj.gov;Sue.Knight@usdoj.gov
- 5 • GERALD M GORDON bankruptcynotices@gordonsilver.com
- 6 • R. VAUGHN GOURLEY vgourley@lvcm.com
- 7 • TALITHA B. GRAY bankruptcynotices@gordonsilver.com
- 8 • JAMES D. GREENE bknotice@schrecklaw.com
- 9 • MARJORIE A. GUYMON bankruptcy@goldguylaw.com, ddias@goldguylaw.com
- 10 • JEFFREY R. HALL jhall@sheacarlyon.com,
bankruptcyfilings@sheacarlyon.com;aboehmer@sheacarlyon.com;ltreadway@sheacarlyon
.com;rsmith@sheacarlyon.com
- 11 • XANNA R. HARDMAN xanna.hardman@gmail.com
- 12 • STEPHEN R HARRIS noticesbh&p@renolaw.biz
- 13 • JEFFREY L HARTMAN notices@bankruptcyreno.com
- 14 • BRIGID M. HIGGINS bankruptcynotices@gordonsilver.com
- 15 • JOHN HINDERAKER JHinder@LRL.com
- 16 • RICHARD F. HOLLEY rholley@nevadafirm.com,
paltstatt@nevadafirm.com;vnelson@nevadafirm.com;sliberio@nevadafirm.com;bkecf@ne
vadafirm.com
- 17 • RANDOLPH L. HOWARD rhoward@klnevada.com,
ckishi@klnevada.com;bankruptcy@klnevada.com
- 18 • DAVID W. HUSTON dwh@hustonlaw.net, swaits@hustonlaw.net
- 19 • CHRISTOPHER D JAIME cjaime@waltherkey.com, kbernhar@waltherkey.com
- 20 • EVAN L. JAMES ejameslv@earthlink.net, kbchrislaw@aol.com
- 21 • ANNETTE W JARVIS ajarvis@rqn.com
- 22 • TY E. KEHOE TyKehoeLaw@aol.com
- 23 • ROBERT R. KINAS rkinas@swlaw.com,
jmcbee@swlaw.com;jmath@swlaw.com;imccord@swlaw.com
- 24 • DEAN T. KIRBY dkirby@kirbymac.com,
jhebert@kirbymac.com;lackerman@kirbymac.com
- 25 • ZACHARIAH LARSON ecf@lslawnv.com
- 26 • JOHN J. LAXAGUE jlaxague@caneclark.com
- 27 • GEORGE C LAZAR glazar@foxjohns.com, gclazar@sbcglobal.net
- 28 • NILE LEATHAM nleatham@klnevada.com,
ckishi@klnevada.com;bankruptcy@klnevada.com
- 29 • ROBERT C. LEPOME rlepome@cox.net, smstanton@cox.net
- 30 • ANNE M. LORADITCH ecffilings@beckleylaw.com,
aloraditch@beckleylaw.com;pkois@beckleylaw.com
- 31 • PATRICIA A. MARR jjllaw@leelaw.lvcoxmail.com,
lqlaw03@yahoo.com;mark@leelaw.lvcoxmail.com
- 32 • JAMES C. MCCARROLL , dturetsky@reedsmith.com;leonard@reedsmith.com
- 33 • REGINA M. MCCONNELL rmcconnell@kssattorneys.com
- 34 • WILLIAM L. MCGIMSEY lawoffices601@lvcoxmail.com
- 35 • RICHARD MCKNIGHT mcknightlaw@cox.net,
gkopang@lawlasvegas.com;cburke@lawlasvegas.com

JONES VARGAS
100 W. Liberty Street, 12th Floor
P.O. Box 281
Reno, Nevada 89504-0281
Tel: (775) 786-5000 Fax: (775) 786-1177

- 1 • JEANETTE E. MCPHERSON bkfilings@s-mlaw.com
- 2 • JEANETTE E. MCPHERSON bkfilings@s-mlaw.com
- 3 • SHAWN W MILLER bankruptcyfilings@sheacarlyon.com,
smiller@sheacarlyon.com;aboehmer@sheacarlyon.com;ltreadway@sheacarlyon.com;rsmit
h@sheacarlyon.com
- 4 • DAVID MINCIN mcknightlaw@cox.net,
gkopang@lawlasvegas.com;dmincin@lawlasvegas.com,cburke@lawlasvegas.com
- 5 • JOHN F MURTHA jmurtha@woodburnandwedge.com
- 6 • ERVEN T. NELSON erv@rlbolick.com, susan@rlbolick.com
- 7 • VICTORIA L NELSON bkecf@nevadafirm.com,
vnelson@nevadafirm.com;paltstatt@nevadafirm.com;rholley@nevadafirm.com;sliberio@
nevadafirm.com
- 8 • BOB L. OLSON ecffilings@beckleylaw.com,
bolson@beckleylaw.com;dgriffis@beckleylaw.com
- 9 • DONNA M. OSBORN ebaker@marquisaurbach.com,
dosborn@marquisaurbach.com;tszostek@marquisaurbach.com;kgallegos@MarquisAurba
ch.com
- 10 • ANDREW M. PARLEN aparlen@stutman.com
- 11 • DONALD T. POLEDNAK sandplegal@yahoo.com, spbankruptcy@yahoo.com
- 12 • PAUL C RAY info@johnpeterlee.com
- 13 • CHRISTINE A ROBERTS bankruptcy@rocgd.com
- 14 • SUSAN WILLIAMS SCANN sscann@deanerlaw.com, palexander@deanerlaw.com
- 15 • LENARD E. SCHWARTZER bkfilings@s-mlaw.com
- 16 • JAMES PATRICK SHEA bankruptcyfilings@sheacarlyon.com,
ltreadway@sheacarlyon.com;rmsmith@sheacarlyon.com;aboehmer@sheacarlyon.com
- 17 • SHLOMO S. SHERMAN ssherman@sheacarlyon.com,
aboehmer@sheacarlyon.com;bankruptcyfilings@sheacarlyon.com;ltreadway@sheacarlyon
.com;rmsmith@sheacarlyon.com
- 18 • AMBRISH S. SIDHU ecf@lslawnv.com
- 19 • JEFFREY G. SLOANE gjklepel@yahoo.com, rmcconnell@kssattorneys.com
- 20 • ALAN R SMITH mail@asmithlaw.com,
turk@asmithlaw.com;marsh@asmithlaw.com;darby@asmithlaw.com
- 21 • DAVID A. STEPHENS dstephens@lvcm.com
- 22 • PETER SUSI cheryl@msmlaw.com, msm@msmlaw.com
- 23 • JEFFREY R. SYLVESTER jeff@sylvesterpolednak.com,
David@sylvesterpolednak.com
- 24 • CARYN S. TIJSSELING ctijsseling@beckleylaw.com, jblair@beckleylaw.com
- 25 • AMY N. TIRRE , lleverett@kkbrf.com
- 26 • AMY N. TIRRE atirre@kkbrf.com, lleverett@kkbrf.com
- 27 • U.S. TRUSTEE - LV - 11 USTPRegion17.lv.ecf@usdoj.gov
- 28 • GREGORY J. WALCH GWalch@Nevadafirm.com
- RUSSELL S. WALKER rwalker@wklawpc.com,
eloveridge@wklawpc.com;lboynton@wklawpc.com;ckirk@wklawpc.com
- WHITNEY B. WARNICK wbw@albrightstoddard.com, bstessel@albrightstoddard.com
- WILLIAM J. WRAY wjjw@oreillylawgroup.com,
rh@oreillylawgroup.com,bc@oreillylawgroup.com,lc@oreillylawgroup.com,ddh@oreillyl
awgroup.com,mr@oreillylawgroup.com
- JOAN C WRIGHT jwright@allisonmackenzie.com, jbrooks@allisonmackenzie.com

JONES VARGAS
100 W. Liberty Street, 12th Floor
P.O. Box 281
Reno, Nevada 89504-0281
Tel: (775) 786-5000 Fax: (775) 786-1177

1 • MATTHEW C. ZIRZOW bankruptcynotices@gordonsilver.com
2 • ANTHONY A. ZMAILA azmaila@nevadafirm.com,
3 bkecf@nevadafirm.com;mbarnes@nevadafirm.com,paltstatt@nevadafirm.com

4 9 b. **United States mail, postage fully prepaid** (list persons and addresses):

5 9 c. **Personal Service** (list persons and addresses):
6 I personally delivered the document(s) to the persons at these addresses:

7 9 For a party represented by an attorney, delivery was made by
8 handing the document(s) to the attorney or by leaving the document(s) at
9 the attorney's office with a clerk or other person in charge, or if no one is in
10 charge by leaving the document(s) in a conspicuous place in the office.

11 9 For a party, delivery was made by handing the document(s) to the
12 party or by leaving the document(s) at the person's dwelling house or usual
13 place of abode with someone of suitable age and discretion residing there.

14 ■ d. **By direct email (as opposed to through the ECF System)** (list persons
15 and email addresses):

16 **Frank Merola, Eve Karasik & Christine M. Pajak**

17 fmerola@stutman.com: ekarasik@stutman.com; cpajak@stutman.com

18 **Marc A. Levinson & Lynn Trinka Ernce**

19 malevinson@orick.com;lernce@orrick.com

20 **Andrew Welcher c/o William E. Winfield,**

21 wwinfield@nchc.com

22 **Steven C. Strong, & Douglas M. Monson**

23 sstrong@rqn.com; dmonson@rqn.com

24 **Leonard E. Schwartz**

25 Lschwartz@s-mlaw.com

26 **Susan M. Freeman**

27 sfreeman@lrlaw.com

28 **August B. Landis**

29 Augie.landis@usdoj.gov

30 **Nevada Mortgage Lending Division**

31 **Attn: Susan Eckhardt**

32 seckhardt@mld.nv.gov

33 Based upon the written agreement of the parties to accept service by email
34 or a court order, I caused the document(s) to be sent to the persons at the
35 email addresses listed below. I did not receive, within a reasonable time
36 after the transmission, any electronic message or other indication that the
37 transmission was unsuccessful.

38 9 e. **By fax transmission** (list persons and fax numbers):

JONES VARGAS
100 W. Liberty Street, 12th Floor
P.O. Box 281
Reno, Nevada 89504-0281
Tel: (775) 786-5000 Fax: (775) 786-1177

Based upon the written agreement of the parties to accept service by fax transmission or a court order, I faxed the document(s) to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission is attached.

9 f. By messenger:

I served the document(s) by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a messenger for service. (A declaration by the messenger must be attached to this Certificate of Service).

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 12th day of March, 2007.

Louis M. Bubala III

Name

//s// Louis M. Bubala III

Signature

JONES VARGAS
100 W. Liberty Street, 12th Floor
P.O. Box 281
Reno, Nevada 89504-0281
Tel: (775) 786-5000 Fax: (775) 786-1177